AFR

73

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 4519 of 2006

R. Narayanan

Versus

State of Chhattisgarh & another

And

Writ Petition (S) No. 4524 of 2006

S.R. Tainguria

Versus

State of Chhattisgarh & another

ORDER

Post for : 27.08.2007

Sd/-
Sunil Kumar Sinha
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 4519 of 2006

PETITIONER R. Narayanan, S/o Late C.R. Nambiar, Aged about 59 years, Deputy Director, Local Fund Audit, Posted at Bilaspur, R/o. 6, Surajmukhi, Raj Kishore Nagar, Bilaspur, Chhattisgarh.

Versus

RESPONDENTS

1. State of Chhattisgarh, Through the Secretary, Department of Finance, Mantralaya, D.K.S. Bhawan, Raipur, Chhattisgarh.
2. Director, Local Fund Audit, B-99, Main Road, Samata Colony, Near Pandey Nursing Home, Raipur, Chhattisgarh.

And

Writ Petition (S) No. 4524 of 2006

PETITIONER S.R. Tainguria, S/o. Chingaram Tainguria, Aged about 59 years, Deputy Director, Local Fund Audit, posted at Jagdalpur,

Local address: A-44, Priyadarshini Nagar, Bilaspur, Chhattisgarh.

Versus

RESPONDENTS

1. State of Chhattisgarh, Through the Secretary, Department of Finance, Mantralaya, D.K.S. Bhawan, Raipur, Chhattisgarh.
2. Director, Local Fund Audit, B-99, Main Road, Samata Colony, Near Pandey Nursing Home, Raipur, Chhattisgarh.

(Writ Petitions under Article 226/227 of the Constitution of India)

Appearance:

Shri Sanjay K. Agrawal and Shri Sudeep Agrawal, Advocates for the petitioners in both the petitions.

Shri Yashwant Singh and Shri A.S. Kachhawaha, Government Advocates for the State/respondents in both petitions.

ORDER
(27.08.2007)

SUNIL KUMAR SINHA, J.

(1) Since the relief(s) claimed in both the petitions are identical, therefore, they are being disposed of by this common order.

(2) The brief facts are that on the date of filing of the writ petitions, the petitioners were working on the substantive post of Deputy Director, Local Fund Audit since 5th July, 2002. During the pendency of writ petition, petitioner- S.R. Tainguria has been superannuated on 30th June, 2007, whereas other petitioner- R. Narayanan is going to retire in the month of November, 2007.

(3) In accordance with the provisions of Madhya Pradesh (Chhattisgarh) Local Fund Audit (Gazetted) Service Recruitment Rules, 1991 (hereinafter referred to as the Rules), which is applicable in the case of petitioners, for promotion to the post of Joint Director from the post of Dy. Director, 3 years experience is required. The claim of the petitioners is that though the petitioners were eligible and entitled to be considered for promoted to the next higher post of Joint Director and they have submitted many representations, the meeting of Departmental Promotion Committee (D.P.C.) has not been convened nor the cases of the petitioners and the other suitable candidates have been considered for the said post. According to their contention, the D.P.C. has not been convened by the State of Chhattisgarh.

(4) The respondents have filed their return. According to them, when the gradation list of Dy. Director, as on 1.4.2005, was published and objections were called, one Mr. J.S. Watve, Deputy Director had made objection and the finalization of the gradation list, after decision on objection, is under process, whereafter, the D.P.C. is to be convened.

(5) During the course of arguments, learned counsel for the petitioners, referring to the document dated 15.3.2007, submitted that the objection raised by Mr. J.S. Watve has been allowed and

suitable amendment has been made in the gradation list. He further submitted that every civil servant has a right to be considered for promotion as promotion is a condition of service and the State is constitutionally obliged to create promotional avenues. He referred to the decisions of the Apex Court in the matters of ***C.O. Arumugam and others –Vs- State of Tamil Nadu and others, 1991 Supp. (2) SCC 199*** and ***State of Tripura and others –Vs- K.K. Roy, 2004 AIR SCW 1.***

(6) On the other hand, learned counsel for the State restricted his arguments onthe grounds raised in their reply.

(7) I have heard the learned counsel for the petitioners and the State and have also perused the records of the two writ petitions.

(8) Rule 13 of Rules 1991 provides for appointment by promotion. Sub-Rule (1) provides that there shall be constituted a committee consisting of the members mentioned in Schedule-IV for making preliminary selection for promotion of eligible candidates. Sub-Rule (2) provides that the Committee shall meet at intervals ordinarily not exceeding one year. Sub-Rules (3) & (4) provide for guidelines regarding procedure etc. The conditions of eligibility for promotion have been very specifically provided in Rule14. Rule 14 is quoted as follows:

> **"14. Conditions of eligibility for promotion.**-(1) Subject to the provisions of sub-rule (2) the Committee shall consider the cases of all persons who on the first day of January of that year had completed not less than such number of years of service (whether officiating or substantive) in the posts from which promotion is to be made as specified in column (4) of Schedule-IV, and are within the zone of consideration in accordance with the provisions of sub-rule (2):
>
> Provided that the services of the released officers of the Emergency Commission and short Service Commission, after their appointment in the service, shall be counted from the date from which they have been deemed to have been appointed in the service in accordance with the General Administration Department Memo No. 2266-1987-I-(3)-67, dated the 21st October, 1967:

> Provided further that any junior person shall not be considered for selection grade/promotion in preference to the person senior to him only on the basis of his completing the prescribed years of service.
>
> (2) The field of selection shall ordinarily be limited to seven times the number of officers to be included in the select list, in respect of posts to be filled on the basis of "Merit-cum-Seniority" and five times the number of officers to be included in the Select list in respect of posts to be filled on the basis of "Seniority-cum-Merit":
>
> Provided that if the required number of suitable officers are not available in the field so determined, the field may be enlarged to the extent considered necessary by the Committee by mentioning the reasons in writing."

(9) If we look into the Schedule-IV annexed with the Rules of 1991, it would appear that the feeder post for promotion to the post of Joint Director is Dy. Director and the service experience for promotion has been laid down as 3 years. That is to say that if a person has completed 3 years on the post of Dy. Director, he shall be eligible for consideration for promotion to the post of Joint Director, for which, a D.P.C. has to be convened in accordance with the provisions of Rule 13 and 14 of the said Rules. As it has been specifically provided in sub-rule (2) of Rule 13 that the D.P.c. shall meet at intervals ordinarily not exceeding one year, it was incumbent upon the Government to ordinarily convene the D.P.C. at the intervals of one year. It is unfortunate that in the present case, the D.P.C. has never been convened by the Government and the employees, like the petitioners have to pray for a command before the High Court and in the meanwhile one of the petitioners S.R. Tainguria has been superannuated on 30th June, 2007.

(10) In *C.O. Arumugam's* case (supra), the Apex Court said that every civil servant has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Articles 14 and 16 (1) of the Constitution. The consideration of

promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principle. The Apex Court said to the extent that dealing with the case of promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted.

(11) In *K.K. Roy's* case (supra), the Apex Court said that the promotion is a condition of service and the employer/State is constitutionally obliged to create promotional avenues. The Employer being a State within the meaning of Article 12 of the Constitution should have created promotional avenues for the employees having regard to its constitutional obligations adumbrated in Artcles 14 and 16 of the Constitution of India. The Apex Court said that despite its constitutional obligations, the State cannot take a stand that as the employee accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue of promotion, (as it was in that case), he cannot resile therefrom. The Apex Court further said that it is not a case where the principles of estoppel or waiver should be applied having regard to the constitutional functions of the State. This all was said in the case of Law Officer-cum-Draftsman, which was a single cadre post.

(12) On the principles referred to above, it is apparently clear that it was an obligation on the part of the State to consider the cases of suitable candidates for promotion according to their turn as the same is a guarantee flowing from Articles 14 and 16 (1) of the Constitution. Sub-rule (2) of Rule 13 is also very clear, which provides that the D.P.C. "shall" meet at intervals ordinarily not exceeding one year, but, as stated above, in the present case, the D.P.C. has never met to consider the cases for promotion of the

suitable employees. The State has not fulfilled its obligation under the Constitution. Admittedly, the petitioners became due for promotion on 1.1.2006 on account of completion of 3 years on the post of Dy. Director on 6.7.2005 and their cases ought to have been considered in the first D.P.C., which ought to have been convened after 1.1.2006 as per provisions of Rule 14 (1) read with Rule 13 (2) of the Rules of 1991, but the D.P.C. has not been convened and in the meantime, one of the petitioners has retired.

(13) Now the question arises as to what relief(s) can be granted to the petitioners at this stage, particularly when the petitioner S.R. Tainguria has been superannuated on 30.6.2007. Learned counsel for the petitioners has argued that a direction should be issued to the State to convene the meeting of D.P.C. for consideration of the cases of the petitioners from the dated on which, the petitioners became eligible to be promoted on the post of Joint Director and if found fit, they be given promotion with retrospective effect with all consequential benefits since the said date.

(14) The above arguments, raised by learned counsel for the petitioners, cannot be accepted. It is not a case where the D.P.C. was convened and the cases of the petitioners were not considered or were deferred or for any other reason, a person junior to the petitioners has been promoted. It is a case in which nobody has been promoted, particularly after becoming the petitioners eligible for promotion, because the D.P.C. itself was not convened and no occasion had arisen when the rights of the petitioners to be considered have been denied. Had there been a case that after the eligibility for promotion, the cases of the petitioners were not considered and other persons, say junior to the petitioners, were promoted, then only, the petitioners had a right for consideration of their cases for grant of promotion with retrospective effect on the basis of discriminatory treatment as per Article 14 of the Constitution. And in such a situation, right to promotion could have been considered even though the petitioner has retired.

(15) In the present case, as stated above, the post(s) of Joint Director are lying vacant and nobody junior to the petitioners has been promoted neither the cases of the petitioners have been deferred but they could not be considered on account of non-meeting of the D.P.C. Therefore, the cases of the petitioners cannot be considered with retrospective effect. So far as petitioner-S.R. Tainguria is concerned, he has been superannuated, therefore, on the above principles, in the opinion of this Court, at this stage, he is not entitled to the relief of consideration for promotion. However, the other petitioner is entitled for the said relief.

(16) In the result, the petitions are disposed of on the following terms:-

(i) As it is told that the gradation list has been finalized, therefore, it is directed that the State shall convene the meeting of D.P.C. as per Rule 13 and 14 of the Rules, 1991 within a period of 2 months from today and shall consider the case of the petitioner-R. Narayanan and other suitable employees for their promotion to the said higher post and to this extent W.P.(S) No. 4519/2006 is allowed. The prayer made for retrospective consideration is dismissed.

(ii) The Writ Petition No. 4524/2006, filed by the petitioner- S.R. Tainguria is dismissed being infructuous by efflux of time.

(iii) No order as to costs.

Sd/-
Sunil Kumar Sinha
Judge

vatti